

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL CASE NO. 1:07cr33-3

UNITED STATES OF AMERICA,)

)

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vs.

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JEANNIE LARGENT COSBY.)

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ORDER

THIS MATTER is before the Court on the limited remand of the United States Fourth Circuit Court of Appeals (Fourth Circuit) [Doc. 355].

On July 31, 2009, Hon. Lacy H. Thornburg denied the Defendant's motion pursuant to 18 U.S.C. §3582 to reduce her sentence.¹ [Doc. 347]. The docket shows that on that same date, a copy of the Order was mailed to the Defendant.

On August 30, 2009, the Defendant signed a "Motion Seeking Review of District Court's Decision to Uphold Erroneous Career Offender Status to Support Denial of Sentence Reduction According to Change in Sentencing Guidelines - Amendment 706 and 711" which she mailed to the

¹When Judge Thornburg retired, the case was reassigned to the undersigned.

Fourth Circuit in Richmond, Virginia. [Doc. 351, at 2]. She signed a certificate of service stating that she delivered the document to prison authorities on that same date. [Id., at 5]. The envelop containing the document was postmarked by the United States Post Office in Fort Worth, Texas, where the Defendant is incarcerated, on August 31, 2009. [Id., at 23]. On September 3, 2009, the Fourth Circuit received the motion which it construed as a notice of appeal. [Doc. 351]. On September 17, 2009, the Fourth Circuit forwarded that document to this Court where it was received on September 28, 2009. [Id.].

On the same date that the Court received the motion from the Fourth Circuit, this Court also received from the Defendant a formal notice of appeal in this matter. [Doc. 349]. In that notice, she explained that she had sent the above-described motion to the Fourth Circuit who had instructed her to make the filing with this Court. [Id., at 1]. The formal notice of appeal was signed by the Defendant on September 23, 2009 and the envelop containing it was postmarked by the United States Post Office in Fort Worth, Texas on September 25, 2009. [Id., at 3].

As noted by the Fourth Circuit, the Defendant had ten days after entry of the Order on July 31, 2009 within which to file her notice of appeal;

that is, until August 14, 2009. [Doc. 359]. Because she mistakenly filed her notice at the Fourth Circuit, it is deemed filed in this Court on September 3, 2009, the date on which it was received at the Fourth Circuit.

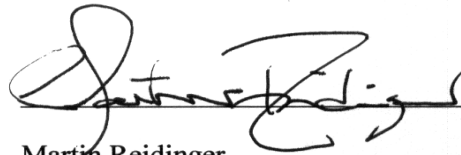
Fed.R.App.P. 4(d).

The Federal Rules of Appellate Procedure provide that with or without a motion, the district court may extend the time within which to file a notice of appeal for up to thirty days if excusable neglect or good cause is shown. Fed.R.App.P. 4(b)(4). Here, the thirty day excusable neglect or good cause period expired on September 14, 2009. The Fourth Circuit issued this limited remand so that this Court may consider whether the Defendant has shown excusable neglect or good cause which would warrant the thirty day extension. [Doc. 355]. There is nothing in the record showing when the Defendant received the copy of the Order denying her motion and from which appeal was to have been taken. Thus, the Court will provide the Defendant with an opportunity to advise the Court of the date on which she received the Order denying her motion and of any other factors showing excusable neglect or good cause. See, e.g., United States v. Shillingford, 568 F.2d 1106 (5th Cir. 1978) (instructing district court to provide thirty day period to the prisoner to explain excusable neglect);

United States v. Eckles, 2009 WL 217-271 (W.D.N.C. 2009) (noting that defendant's incarceration out of the district would weigh in favor of finding excusable neglect).

IT IS, THEREFORE, ORDERED that on or before thirty (30) days from entry of this Order, the Defendant may file response showing the date on which she received the Order of July 31, 2009 denying her motion and/or any other grounds for excusable neglect or good cause for failing to file the notice of appeal in a timely manner.

Signed: January 7, 2010


Martin Reidinger
United States District Judge

